

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
H. J. AND LILLYAN TANENBAUM)

Appearances:

For Appellants: Jack Glantz, Public Accountant

For Respondent: Peter A. Pierson, Assistant
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of H. J. and Lillyan Tanenbaum against a proposed assessment of additional personal income tax in the amount of \$82.00 for the year 1957.

The question presented concerns the propriety of a bad debt deduction taken by appellants in their 1957 return.

On March 20, 1956, appellant H. J. Tanenbaum (hereafter referred to as "appellant") guaranteed a bank note in the amount of \$2,400.00 for his nephew, Morton M. Tannen. The proceeds of that note were used by Tannen to establish a restaurant. Tannen's last monthly payment to the creditor bank was made on February 28, 1957, leaving an unpaid balance of \$600.00.

On March 14, 1957, appellant co-signed a second note with Tannen in the amount of \$3,500.00. The purpose of the loan was to pay trade creditors. Tannen made no payments on this note.

In April 1957, Tannen was locked out of his restaurant by his creditor landlord. Appellant paid the

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remaining balance on the first note and the entire amount of the second note to the bank on April 24, 1957. In his 1957 tax return, appellant claimed this **\$4,100.00** as a bad debt deduction.

On January 5, 1962, after respondent questioned the deduction, Tannen wrote a letter to respondent, in which he stated that he had not salvaged any funds from the business, that he had been unable to pay his creditors to date, and that he saw no prospect of his being able to make such payments in the future. In addition he wrote, "Mr. Tanenbaum made no legal effort or demand upon me since he was fully aware that there were no funds, and because of our relationship."

This appeal is made from respondent's disallowance of the **\$4,100.00** as a bad debt deduction.

During the year involved, section 17207 of the Revenue and Taxation Code allowed as a deduction "debts which **become worthless during the taxable year.**"

Respondent contends (1) that no valid debt existed because appellant never expected to be reimbursed or intended to assert a claim in case it became necessary for him to pay under the guaranties, and (2) that, if there was a valid debt, appellant has not established that it was worthless in 1957.

Whether or not any bona fide indebtedness ever existed between appellant and his nephew, Tannen, appellant has failed to prove that the alleged debt became worthless in the taxable year 1957. Appellant never made any serious effort to obtain repayment. **A taxpayer who refuses to enforce payment of a debt because of family ties does not thereby have a valid worthless debt deduction. (Thom v. Burnet, 55 F.2d 1039.)**

Appellant contends that no legal steps were taken because it was known they would be futile. Though circumstances may exist in which legal steps are unnecessary to establish the worthlessness of a debt, a self-ascertainment of worthlessness without showing that all of the facts support it is totally inadequate.- (Matthew Edwards, Sr., T.C. Memo., Dkt. No. 61950, July 21, 1959.) There is no evidence of the total amount of Tannen's assets and liabilities in 1957 or of his activities and prospects in that year after the restaurant closed. These details are particularly important where a

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family relationship is involved, since the relationship inclines the creditor toward a lenient view of the ability of the debtor to pay. Tannen's own declaration that he was unable to pay is insufficient to establish that the **debt** was in fact "worthless," within the meaning of section 17207 of the Revenue and Taxation Code.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED -AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of H. J. and Lillian Tanenbaum to a proposed assessment of additional personal income tax in the amount of \$82.00 for the year 1957 be and the same is hereby sustained.

Done at Sacramento, California, this 7th day
of April, 1964, by the State Board of Equalization.

Paul R. Leake, Chairman
John W. Lynch, Member
J. Duhan, Member
Chas. E. Heuer, Member
_____, Member

ATTEST W. Freeman, Secretary